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ABSTRACT

This digest focuses on legal and ethical issues in supervision. Ethics call the supervisor to a standard of practice sanctioned by the profession while legal statutes define a point beyond which a supervisor may be liable. Several issues are considered, including competence of both the counselor and the supervisor. Dual relationships and therapeutic relationships are discussed, and it is noted that there has been greater divergence of opinion about what constitutes an inappropriate dual relationship between supervisor and counselor than between counselor and client. Finally, issues of informed consent, due process, confidentiality, and liability are addressed. The digest concludes that, as gatekeepers of the profession, supervisors must be diligent about their own and their supervisees' ethics. Contains 8 references. (NB)

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ERIC CLEARINGHOUSE ON Counseling And Student Services

ERIC DIGEST

April 1994 EDO-CG-94-17

Ethical and Legal Dimensions of Supervision

Janine M. Bernard

In recent years, it has become generally accepted that supervision draws upon knowledge and skills that are different than, and go beyond, those of psychotherapy. Similarly, the ethics and legal imperatives regarding supervision both encompass psychotherapy issues and go beyond them. Furthermore, because supervision is a *triadic* rather than a dyadic relationship, the supervisor must always attend to the need for balance between the counseling needs of clients and the training needs of the counselor.

With the increase of litigation in American society over the past generation, ethics and law have become intermingled (Bernard & Goodyear, 1992). It is important for the supervisor to remember, however, that ethics call the supervisor to a *standard* of practice sanctioned by the profession while legal statutes define a point beyond which a supervisor may be *liable*. For our purposes here, the functional interconnectedness between ethics and the law will be accepted.

Competence

Competence is an increasingly complex issue as mental health and supervision have become more sophisticated enterprises. Implications of both counselor competence and supervisor competence will be described here briefly.

Counselor competence

By definition, a supervisee is a person who is not yet ready to practice independently. It is for this reason that supervisors are held responsible for what happens with clients being seen by the supervisee (Harrar, VandeCreek, & Knapp, 1990). At the same time, counselors must be challenged in order to become more expert. This, then, is the supervisor's tightrope: providing experiences that will stretch the counselor's ability without putting the client in danger or offering substandard care. Whenever a close call must be made, supervisors must remember that their obligation is to the client, the public, the profession, and the supervisee — in that order (Sherry, 1991). Therefore, the supervisor continually decides if the supervisee is good enough on a consistent basis to work with any particular client (ACES, 1993).

Supervisor competence

First, the supervisor needs to know everything, and more, than is expected of the supervisee. Secondly, the supervisor must be expert in the process of supervision. It is not enough that clients are protected as a result of supervision; the contract between supervisor and supervisee dictates that supervision must ultimately result in better counseling skills for the supervisee. In order to accomplish this, it is generally accepted that the supervisor receive training in performance of supervision as well as supervision of supervision.

Dual Relationships

For both counselors and supervisors, any dual relationship is problematic if it increases the potential for exploitation or impairs professional objectivity (Kitchener, 1988). There has been greater divergence of opinion about what constitutes an inappropriate dual relationship between supervisor and counselor than between counselor and client. Ryder and Hepworth (1991), for example, stated that dual relationships between supervisors and supervisees are endemic to many educational and work contexts. Most supervisors will, in fact, have more than one relationship with their supervisees (e.g., graduate assistant, co-author, co-facilitator). The key concepts remain "exploitation" and "objectivity." Supervisors must be diligent about avoiding any situation which puts a supervisee at risk for exploitation or increases the possibility that the supervisor will be less objective. It is crucial, however, that supervisors not be intimidated into hiding dual relationships because of rigid interpretations of ethical standards. The most dangerous of scenarios is the hidden relationship. Usually, a situation can be adjusted to protect all concerned parties if consultation is sought and there is an openness to making adjustments in supervisory relationships to benefit supervisee, supervisor and, most importantly, clients.

Therapeutic relationships

As part of the mandate of competence, the supervisor must determine not only if the supervisee has the knowledge and skill to be a good counselor, but if he or she is personally ready to take on clinical responsibility (Kurpius, Gibson, Lewis, & Corbet, 1991). The issue of personal readiness can lead the supervisor to blur the roles of supervisor and therapist in an attempt to keep the supervisee functional as a counselor. This is problematic for two reasons: (1) it compromises the objectivity of the supervisor, especially in terms of evaluation; (2) it may allow an impaired counselor to continue to practice at the risk of present and future clients.

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Informed Consent

Informed consent is key to protecting the counselor and/or supervisor from a malpractice lawsuit (Woody, 1984). Simply, informed consent requires that the recipient of any service or intervention is sufficiently educated about what is to transpire, the potential risks, and alternative services or interventions, so that he or she can make an intelligent decision about his or her participation. Supervisors must be diligent regarding three levels of informed consent (Bernard & Goodyear, 1992): (1) the supervisor must be confident that the counselor has informed the client regarding the parameters of counseling; (2) the supervisor must be sure that the client is aware of the parameters of supervision (e.g., that audiotapes will be heard by a supervision group); and (3) the supervisor must inform the supervisee about the process of supervision, evaluation criteria, and other expectations of supervision (e.g., that supervisees will be required to conduct all intake interviews for a counseling center in order to increase interview and writing skills).

Due Process

Due process is a legal term that insures one's rights and liberties. While informed consent focuses on the entry into counseling supervision, due process revolves around the idea that one's rights must be protected from start to finish. Again, supervisors must protect the rights of both clients and supervisees. An abrupt termination of a client could be a due process violation. Similarly, a negative final evaluation of a supervisee, without warning and with no opportunity to improve one's functioning, is a violation of the supervisee's due process rights.

Confidentiality

Confidentiality is an often-discussed concept in supervision because of some important limits of confidentiality both within the therapeutic situation and within supervision. It is imperative that the supervisee understands both the mandate of honoring information as confidential (including records kept on the client) as well as understanding when confidentiality must be broken (including the duty to warn potential victims of violence) and how this should be done. Equally important is a frank discussion about confidentiality within supervision and its limits. The supervisee should be able to trust the supervisor with personal information, yet at the same time, be informed about exceptions to the assumption of privacy. For example, supervisees should be apprised that at some future time, their supervisors may be asked to share relevant information to State licensure boards regarding their readiness for independent practice; or supervisors may include supervision information during annual reviews of students in a graduate program.

Liability

Supervisors should not shun opportunities to supervise because of fears of liability. Rather, the informed, conscientious supervisor is protected by knowledge of ethical standards and a process that allows standards to be met consistently. There are three safeguards for the supervisor regarding liability: (1) continuing education, especially in terms of current professional opinion regarding ethical and legal dilemmas; (2) consultation with trusted and credentialed colleagues when questions arise; and (3) documentation of both counseling and supervision, remembering that courts often follow the principle "What has not been written has not been done" (Harrar, Vandecreek, & Knapp, 1990).

Conclusion

As gatekeepers of the profession, supervisors must be diligent about their own and their supervisees' ethics. Ethical practice includes both knowledge of codes and legal statutes, and practice that is both respectful and competent. "In this case, perhaps more than in any other, supervisors' primary responsibility is to model what they hope to teach" (Bernard & Goodyear, 1992, p. 150).

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